APPENDIX.

Petitioners submit that in all the taxpayer and special assessment cases (which counsel for respondents admit (in brief at page 20), do show a sufficient property interest to sustain full length litigation) the item about which complaint was made is always a small percentage or remote residue arrived at by accounting and calculation out of the aggregate tax or special assessment paid by each of the class of petitioners. *Id certum est quod certum potest.* The general statements (with implied assumption to the contrary) made by respondents at pages 6, 10 and 18, are only pious wishes.

The "brief in opposition" is no more than an argument that some of the cases which are listed at the foot of the petition, are not completely exact precedents, and might be distinguished in marginal and remote ways. (Petitioners do not admit that argument and will challenge the whole of it when the court authorizes the filing of a definitive brief for appellants.)

The Fraudulent Barsaloux Case.

In this Court the Respondents rely upon the case of *Barsaloux* v. *City of Chicago,* 245 Ill. 598. As matter of pleading the motion by Respondents to dismiss (Tr. 99) is an admission of the truth of that part of *the complaint* (Tr. 54), which *establishes as fact* that the *Barsaloux* case and the other cases mentioned by the Respondents, (their brief pages 14 and 27), are wholly fraudulent proceedings, so far as your petitioners are concerned. Your petitioners were not made parties thereto and are not bound thereby.

(See our Petition at Tr. pages 51 and 52.) Respondents assume facts which they must prove after they make answer to the complaint in the District Court. Their brief here is a speaking demurrer. If this Court issues the writ so that counsel for your petitioners may file a definitive brief, a full length analysis of the Barsaloux line of cases will be made. From that analysis it will appear that those cases are not any authority whatever, and are not persuasive upon any of the points mentioned by the Respondents. At this time only brief mention will be made by way of example.

The opinion in the *Barsaloux* case, 245 Ill. at page 604 includes this language:

> "* * * It is charged in the bills that the city of Chicago (1) is entirely without power or authority to either build or authorize the building of subways (2) such as are described in the said ordinances (3) or to grant authority to any other corporation to so build such subways, and that the (4) appropriation and payment of any public funds, (5) either from the special traction fund or the general corporate funds of the city, (6) for preliminary work in connection with such subways (7) is illegal and a (8) misappropriation of public funds, (9) which may be enjoined *at the suit of an interested taxpayer.*"

The numbering is supplied by Petitioners for emphasis.

The question decided in the *Barsaloux* case was that *the City of Chicago has the statutory power to build or to purchase street railway lines or subways.* No where in that case can be found one word as to the use of the Traction fund to build a subway for the elevated steam railroads. (See Page 609.)

In that *Barsaloux* case general demurrers were sustained to two separate bills of complaint. The opinion covers matters involved in both complaints, and includes matters involved with respect both to street railroads as such, and

also elevated steam railroads. The latter were covered only by an appropriation, not from the street railways fund but from the general corporate fund. (245 Ill. at 601.) It is elementary law in equity that where any point in a bill of complaint is good, the fact that there are other points in the case which are debatable or bad, will not prevent the overruling of all general demurrers. That manner of overruling of such general demurrers was done in that record. Furthermore, the Supreme Court of Illinois have established as law for that state that whenever an opinion covers more than one point, (at least 9 points involved in Barsaloux record and quotation above) the opinion is not *res judicata* nor persuasive in any other litigation, between the same parties or any other parties. *City of Geneseo* v. *Illinois Northern Utilities Co.*, 378 Ill. 506 at 519.

Furthermore since opposing counsel admit in this court (pages 15 and 20 of their brief) "that fund is to be expended for the purposes specified in the (year 1907) ordinance," they admit before this Court that it is a trust fund, in which Barsaloux (and Venner and Price and Dudick and others) as taxpayers had no interest whatever. *Price* v. *Mattoon*, 364 Ill. 512. The cases cited by Respondents refute the very contentions asserted by Respondents.

Also there is no language in the opinion in the *Barsaloux* case to authorize the use of any part of the traction fund for expenses for preliminary surveys for subways or street railways. There is nothing in the record or the opinion in the *Barsaloux* case to suggest that any part of the traction fund can be used for any purpose whatever pertaining to *steam railroads, whether surface, elevated or subway.* (See page 26 of our Petition for Writ of Certiorari, and *Gillette* v. *Aurora Railways Co.*, 228 Ill. 261 at 272 ff.) The appropriation made in the *Barsaloux* case with reference to elevated railroads, *was made from the*

general corporate fund. (Page 601.) The Court by its opinion in the *Barsaloux* case was primarily concerned with the question whether the City of Chicago had statutory power to construct subways for *street railway downtown terminals.* The opinion merely says

> "The power to construct (under the statute) necessarily includes the power to take the preliminary steps contemplated by the appropriation ordinance in question." (Page 612.)

The power given under the Mueller law to construct subways would require financing either from the general corporate fund of the city, or from revenue certificates under the Mueller law. The present record is not concerned with that kind of financing. That manner of financing is not before this Court on this record. The financing accomplished here is by a consumer co-operative established by the year 1907 Ordinances.

Complete Sabotage and Wastage of the Trust.

The breaches of the trust committed wilfully by the Respondents, set forth by the complaint and admitted by the motion to dismiss, appear at pages 19 to 45 of the record. It stands admitted that no street railways have been purchased and none have been constructed. Up to now none are owned by this trust fund which was set up by Ordinances to establish a consumer co-operative to purchase and own the street railways of Chicago. It stands admitted that your petitioners as members and this consumer co-operative which was provided for by the year 1907 ordinances, have paid into this trust about one hundred million dollars. It stands admitted by this record that the purpose of that consumer co-operative was to put an end for all time, to the political broils and court receivership proceedings which had occurred at Chicago prior to the year 1907. That is shown by the history of events summarized by the petition for writ of certiorari and estab-

lished by the record. This record clearly shows a firm determination that the recurrent breakdown of local transportation systems at Chicago organized upon the capital-debt-dividend-interest-form of financial structure, was to be superseded by a consumer co-operative economy to provide local transportation at cost without any debt structure.

It is apparent that the brief and argument for the Respondents now advanced, ignores entirely the purposes of the provision made by the year 1907 ordinances and repudiates the idea that there is such a thing as co-operative economy in the world. Respondents cannot conceive that any service economy exists. The Respondents do not remember that there was a feudal system built entirely upon services and the right to services. For them the man who has paid in advance at a hotel has no remedy at court. For them the occupant of a co-operative apartment cannot go to court. For them the occupant of an apartment hotel has no remedy at court and may be evicted without ceremony. For them no member of any club, no family having paid perpetual care in a cemetery, no person who has contributed to any mutual insurance company, no person who has contributed to a fund for hospital care has anything more than moral obligation in his favor. Repondents say to this court that all such persons may be pushed aside whenever the people in power seek to say so.

Respondents' Balance Sheet.

Respondents ignore blandly and blissfully their own balance sheet as of December 31, 1941 which appears at page 157 of this record. That document shows less than $4,200,000 cash on hand at that date, just before this suit was filed. It shows nearly thirty-two millions wasted in worthless tax anticipation warrants, in which trustees cannot invest under the laws in the State of Illinois (Tr. 148). It shows more than seven million dollars wasted in

investigations and plans during the 30 years prior to 1931. All of that is positively contrary to the terms of the year 1907 ordinances. Repondents claim that they have rightfully spent about twenty millions upon subways for the use of elevated steam railroads. Those railroads were not involved in any manner in the year 1907 court proceedings, nor in the year 1907 ordinances, nor have they, nor any of their patrons ever contributed one penny toward the trust fund in question in this case now in this Court. It would be just as logical for Respondents to say that they had invested that fraction of the trust fund in a tunnel subway to connect the Chicago and Northwestern Steam Railroad north of the Chicago River, with the Illinois Central Steam Railroad south of the Chicago River. That improvement often has been suggested and no doubt would be of some general benefit to the travelling public at the City of Chicago. But neither the thing which Respondents say they have done, nor this possible improvement of transportation, would have any relation whatever to the purposes of the year 1907 ordinances, nor to any proper use of the trust fund now before this Court.

This Court is fully cognizant of the tremendous growth of trust funds to be administered by public officials, Federal, State and Municipal, who are made custodial trustees. If this trust at bar is sabotaged successfully, then all Social Security Programs in this country are additional follies. (Petition P. 30.) Your Petitioners appeal to the primary duty of this Court to protect, preserve and defend the trust relationship, for the reasons shown upon this record.

Respectfully submitted,

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